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*Attorneys for Plaintiff, American Covers, Inc.*

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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AMERICAN COVERS, INC., a Utah  
Corporation,

Plaintiff,

vs.

GREENBRIER INTERNATIONAL, INC., a  
Delaware Corporation, and DOLLAR TREE  
STORES, INC., a Virginia Corporation,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT  
WITH JURY DEMAND**

Judge \_\_\_\_\_

Plaintiff American Covers, Inc., (hereinafter "American Covers"), by and through its counsel, hereby files this Complaint with Jury Demand against Defendants Greenbrier International, Inc. and Dollar Tree Stores, Inc., (hereinafter collectively "Greenbrier").

**COMPLAINT**

American Covers complains and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff American Covers, Inc. is a Utah corporation having a principal place of business at 675 West 14600 South, Bluffdale, Utah 84065.
2. Upon information and belief, Defendant Greenbrier International, Inc. is a Delaware corporation having a principal place of business at 500 Volvo Parkway, Chesapeake, Virginia 23320.
3. Upon information and belief, Defendant Dollar Tree Stores, Inc. is a Virginia corporation having a principal place of business at 500 Volvo Parkway, Chesapeake, Virginia 23320.
4. American Covers brings this action under Lanham Trademark Act, Title 15, United States Code § 1051, *et seq.* and Utah State and common law provisions.
5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338 and 1367.
6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 since Greenbrier resides in this district and conducts continuous and systematic business directly related to the trademarks and trade dress at issue in this case in this judicial district.
7. Upon information and belief, this Court has personal specific jurisdiction over Greenbrier as Greenbrier has purposefully directed its activities toward the state of Utah and this action is based upon activities that arise out of or relate to those contacts.
8. Additionally, upon information and belief, this Court has general personal jurisdiction over Greenbrier since its contacts with Utah are substantial, continuous, and systematic.

**GENERAL ALLEGATIONS**

9. American Covers is in the business of inventing, developing, manufacturing, distributing, marketing and selling various automobile accessories and other products. Among the products offered by American Covers is an air freshener designed to be placed on an automobile vent that is sold in connection with the REFRESH YOUR CAR® trademark.
10. The REFRESH YOUR CAR® product has proven to be a very successful product. As such, American Covers has significant common law rights associated with the REFRESH YOUR CAR® trademark throughout the United States.
11. American Covers is the owner of United States trademark registration number 3,368,769 for the mark REFRESH YOUR CAR® for use in connection with “air fresheners and air deodorizers.” The mark has been in continual use with the associated goods since at least as early as October 30, 2006. A copy of United States Trademark Registration Number 3,368,769 is attached hereto as Exhibit A.
12. American Covers is the owner of United States trademark registration number 3,540,303 for the mark REFRESH YOUR CAR!® (plus design) for use in connection with “air fresheners and air deodorizers.” The mark has been in continual use with the associated goods since at least as early as October 30, 2006. A copy of United States Trademark Registration Number 3,540,303 is attached hereto as Exhibit B.
13. A depiction of the packaging American Covers uses to market and sell its REFRESH YOUR CAR® product is attached hereto as Exhibit C.

14. Upon information and belief, Greenbrier manufactures, markets and sells an air freshener product under the name “Car Vent Stick Air Freshener” that uses the REFRESH YOUR CAR® marks and began doing so after the use and registration of American Covers’s REFRESH YOUR CAR® marks. A depiction of the packaging used by Greenbrier to market and sell its “Car Vent Stick Air Freshener” is attached hereto as Exhibit D.
15. Upon information and belief, Greenbrier is marketing and promoting and otherwise using in commerce the REFRESH YOUR CAR! mark in association with an automobile air freshener product in Utah and throughout the United States.
16. Greenbrier’s “Car Vent Stick Air Freshener” product is virtually identical to American Covers’s REFRESH YOUR CAR® product. Greenbrier’s and American Covers’s products directly compete with one another. Both parties’ products are used primarily as automobile air fresheners. Additionally, both products are sold through identical channels of trade and to an identical class of consumers. In many instances, these products would be displayed side by side on the internet and on retail store shelves.
17. By comparing Exhibits C and D, we see that the packaging used by Greenbrier to market and sell its “Car Vent Stick Air Freshener” product is virtually identical to the packaging used by American Covers to market and sell its REFRESH YOUR CAR® product.
18. American Covers’s product has an oval top that displays its REFRESH YOUR CAR® trademark. Greenbrier’s product has an oval top that displays its REFRESH YOUR CAR! mark. The oval tops of each product are virtually identical and will be the only part of the product the customer views while the product is in use.

19. A depiction of a comparison of the oval top of American Covers's product and Greenbrier's product respectively is attached hereto as Exhibit E.
20. By adopting the REFRESH YOUR CAR! mark on a closely related product, Greenbrier is clearly attempting to trade on the significant goodwill in the marketplace associated with American Covers's REFRESH YOUR CAR® trademarks.
21. Because the trademarks of the respective parties' products are virtually identical and the underlying products are virtually identical, the use of REFRESH YOUR CAR by Greenbrier on identical products is likely to cause confusion, or to cause mistake, or to deceive consumers in light of American Covers's registered REFRESH YOUR CAR® trademarks.
22. American Covers asserts that if Greenbrier is allowed to manufacture, promote and sell its "Car Vent Stick Air Freshener" product, unfair competition would result because there is a likelihood of confusion or mistake as to the affiliation, association, or connection of the parties' respective products.

### **FIRST CAUSE OF ACTION**

#### **(Trademark Infringement – 15 U.S.C. §1114(a), Utah Code Ann. §70-3a-402)**

23. American Covers hereby incorporates by this reference each and every preceding allegation as if set forth fully herein.
24. The mark REFRESH YOUR CAR! used by Greenbrier is virtually identical to American Covers's senior, registered marks for REFRESH YOUR CAR® and REFRESH YOUR CAR!® (plus design) in meaning and overall impression and is virtually identical in appearance and pronunciation. Additionally, the goods sold in connection with the

REFRESH YOUR CAR! mark are closely related to American Covers's REFRESH YOUR CAR® goods. As such, the use of the mark REFRESH YOUR CAR! by Greenbrier in connection with its goods is likely to cause confusion, or to cause mistake, or to deceive consumers in light of American Covers's registered REFRESH YOUR CAR® and REFRESH YOUR CAR!® (plus design) trademarks.

25. Through these activities, Greenbrier has infringed American Covers's trademark rights under the Lanham Act, 15 U.S.C. §1114(a), Utah Code Ann. §70-3a-402, and under the common law.
26. American Covers has suffered actual damages, including lost profits, as a result of trademark infringement by Greenbrier in an amount to be proven at trial. Additionally, the harm to American Covers arising from these acts by Greenbrier is not fully compensable by money damages. American Covers has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless this infringing conduct by Greenbrier is preliminarily and permanently enjoined.
27. Since Greenbrier's "Car Vent Stick Air Freshener" product competes directly with American Covers's popular REFRESH YOUR CAR® product, Greenbrier was surely familiar with the REFRESH YOUR CAR® trademarks and Greenbrier's continued unauthorized use of the REFRESH YOUR CAR! mark is willful and intentional. As a result, American Covers is further entitled to treble damages and an award of costs and attorneys' fees.

**SECOND CAUSE OF ACTION**

**(Unfair Competition – 15 U.S.C. §1125(a)(1)(A))**

28. American Covers hereby incorporates by this reference each and every preceding allegation as if set forth fully herein.
29. Greenbrier has used in interstate commerce the term REFRESH YOUR CAR! in connection with an automobile air freshener, which use is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, association, origin, sponsorship, or approval of their goods and commercial activities in light of American Covers's REFRESH YOUR CAR® trademarks.
30. Through these activities, Greenbrier has engaged in unfair competition under the Lanham Act, 15 U.S.C. §1125(a)(1)(A), and under the common law.
31. American Covers has suffered actual damages as a result of unfair competition by Greenbrier in an amount to be proven at trial. Additionally, the harm to American Covers arising from these acts by Greenbrier is not fully compensable by money damages. American Covers has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless this unfair conduct by Greenbrier is preliminarily and permanently enjoined.
32. Since Greenbrier's "Car Vent Stick Air Freshener" product competes directly with American Covers's popular REFRESH YOUR CAR® product, Greenbrier was surely familiar with the REFRESH YOUR CAR® trademarks and Greenbrier's continued unauthorized use of the REFRESH YOUR CAR! mark is willful and intentional. As a

result, American Covers is further entitled to treble damages and an award of costs and attorneys' fees.

**THIRD CAUSE OF ACTION**

**(Unfair Competition, Trade Dress Infringement – 15 U.S.C. §1125)**

33. American Covers hereby incorporates by this reference each and every preceding allegation as if set forth fully herein.
34. American Covers markets and sells an automobile air freshener that uses in commerce the REFRESH YOUR CAR® trademarks with its associated trade dress. The REFRESH YOUR CAR® trademarks are famous and the associated trade dress is distinctive and has acquired secondary meaning such that prospective purchasers associate the distinctive trade dress with American Covers's REFRESH YOUR CAR® product.
35. Greenbrier markets and promotes an automobile air freshener that uses in commerce the REFRESH YOUR CAR! mark with its associated trade dress.
36. Based on Greenbrier's use in commerce of the REFRESH YOUR CAR! mark and its intention to market and sell its "Car Vent Stick Air Freshener" product, the trade dress used by Greenbrier in association with its "Car Vent Stick Air Freshener" product is likely to cause confusion with the trade dress associated with American Covers's REFRESH YOUR CAR® product and result in unfair competition in violation of 15 U.S.C. §1125(a)(1)(A).
37. American Covers has suffered actual damages as a result of unfair competition and trade dress infringement by Greenbrier in an amount to be proven at trial. Additionally, the harm to American Covers arising from these acts by Greenbrier is not fully compensable



by money damages. American Covers has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless this unfair conduct by Greenbrier is preliminarily and permanently enjoined.

38. Since Greenbrier's "Car Vent Stick Air Freshener" product would be directly competing with American Covers's popular REFRESH YOUR CAR® product, Greenbrier was surely familiar with the REFRESH YOUR CAR® trademarks and associated products and Greenbrier's use of the REFRESH YOUR CAR! mark with its associated trade dress is a willful and intentional attempt to trade off American Covers's REFRESH YOUR CAR® product with its associated trade dress. As a result, American Covers is further entitled to an award of costs and attorneys' fees.

#### **FOURTH CAUSE OF ACTION**

##### **(Unfair Competition – Utah Code Ann. §13-5a-102)**

39. American Covers hereby incorporates by this reference each and every preceding allegation as if set forth fully herein.
40. Greenbrier has intentionally used in commerce in the State of Utah the term REFRESH YOUR CAR! in connection with an automobile air freshener, which misappropriates American Covers's goodwill and attempts to pass off Greenbrier's goods as those of American Covers. Such use is unfair or fraudulent and leads to a diminution in value of American Covers's REFRESH YOUR CAR® trademarks and is an infringement of American Covers's trademark rights.

41. The use of the REFRESH YOUR CAR! mark by Greenbrier represents unfair competition in violation of the Utah Unfair Competition Act, Utah Code Ann. §13-5a-101 *et al.*
42. American Covers has suffered actual damages, including lost profits, as a result of unfair business practices by Greenbrier in an amount to be proven at trial. Additionally, the harm to American Covers arising from these acts by Greenbrier is not fully compensable by money damages. American Covers has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless this unfair conduct by Greenbrier is preliminarily and permanently enjoined. Furthermore, American Covers is entitled to its attorneys' fees and costs.

#### **FIFTH CAUSE OF ACTION**

##### **(Unfair Practices – Utah Code Ann. §13-5-1)**

43. American Covers hereby incorporates by this reference each and every preceding allegation as if set forth fully herein.
44. Greenbrier has intentionally used in commerce in the State of Utah the term REFRESH YOUR CAR! in connection with an automobile air freshener, which constitutes an unfair and unlawful method of competition in commerce. Such use is unfair or unlawful and is an infringement of American Covers's trademark rights.
45. The use of the REFRESH YOUR CAR! mark by Greenbrier represents unfair competition in violation of the Utah Unfair Practices Act, Utah Code Ann. §13-5-1 *et al.*
46. American Covers has suffered actual damages, including lost profits, as a result of unfair business practices by Greenbrier in an amount to be proven at trial. Additionally, the

harm to American Covers arising from these acts by Greenbrier is not fully compensable by money damages. American Covers has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless this unfair conduct by Greenbrier is preliminarily and permanently enjoined.

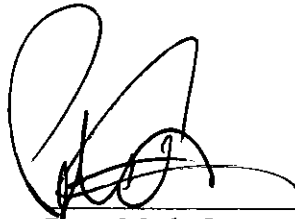
**WHEREFORE**, it is respectfully requested that the Court enter a judgment in favor of American Covers as follows:

- A. That the Court enter judgment declaring that Greenbrier's use of its REFRESH YOUR CAR! mark in the United States is likely to cause confusion with American Covers's REFRESH YOUR CAR® trademarks and results in trademark infringement in violation of the Lanham Act and Utah Code Ann. §70-3a-402;
- B. That the Court enter judgment declaring that Greenbrier's use of its REFRESH YOUR CAR! mark in the United States is likely to cause confusion with American Covers's REFRESH YOUR CAR® trademarks and results in unfair competition in violation of the Lanham Act and Utah Code Ann. §13-5a-102 and the common law;
- C. That the Court enter judgment declaring that Greenbrier's use of its REFRESH YOUR CAR! mark and its associated trade dress in the United States is likely to cause confusion with and infringe American Covers's REFRESH YOUR CAR® trademarks and associated trade dress and results in trade dress infringement in violation of the Lanham Act;

- D. That the Court enter judgment declaring that Greenbrier's use of its REFRESH YOUR CAR! mark is an unfair business practice in violation of Utah Code Ann. §13-5-1 *et al.* and the common law;
- E. That the Court preliminarily and permanently enjoin Greenbrier from using in commerce any mark that infringes or competes unfairly with American Covers's REFRESH YOUR CAR® trademarks;
- F. That Greenbrier be ordered to pay monetary damages to American Covers in an amount to be determined by this Court;
- G. That Greenbrier be ordered to pay American Covers's reasonable attorneys' fees and costs associated with this action pursuant to the Lanham Act;
- H. That Greenbrier be required to pay prejudgment and post-judgment interest until such awards are paid; and
- I. That American Covers have such other and further relief as shall seem just and proper to the Court.

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, American Covers hereby demands a jury trial on all claims and issues so triable.

DATED: April 20<sup>th</sup>, 2009.

A handwritten signature in black ink, appearing to be "Peter M. de Jonge", written over a horizontal line.

Peter M. de Jonge  
Gordon K. Hill  
Jed H. Hansen  
THORPE NORTH & WESTERN, LLP

Attorneys for Plaintiff, American Covers, Inc.

# EXHIBIT A

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52**

**United States Patent and Trademark Office**

**Reg. No. 3,368,769**

**Registered Jan. 15, 2008**

**TRADEMARK  
PRINCIPAL REGISTER**

**REFRESH YOUR CAR**

AMERICAN COVERS, INC. (UTAH CORPORATION)  
102 WEST 12200 SOUTH  
DRAPER, UT 84020

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: AIR FRESHENERS AND AIR DEODORIZERS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SER. NO. 77-176,823, FILED 5-9-2007.

FIRST USE 10-30-2006; IN COMMERCE 10-30-2006.

JOHN WILKE, EXAMINING ATTORNEY

# EXHIBIT B



Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 3,540,303

United States Patent and Trademark Office

Registered Dec. 2, 2008

TRADEMARK  
PRINCIPAL REGISTER



AMERICAN COVERS, INC. (UTAH CORPORATION)  
675 WEST 14600 SOUTH  
BLUFFDALE, UT 84065

OWNER OF U.S. REG. NO. 3,368,769.

FOR: AIR FRESHENERS AND AIR DEODORIZERS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SER. NO. 77-498,847, FILED 6-13-2008.

FIRST USE 10-30-2006; IN COMMERCE 10-30-2006.

KATHERINE CHANG, EXAMINING ATTORNEY

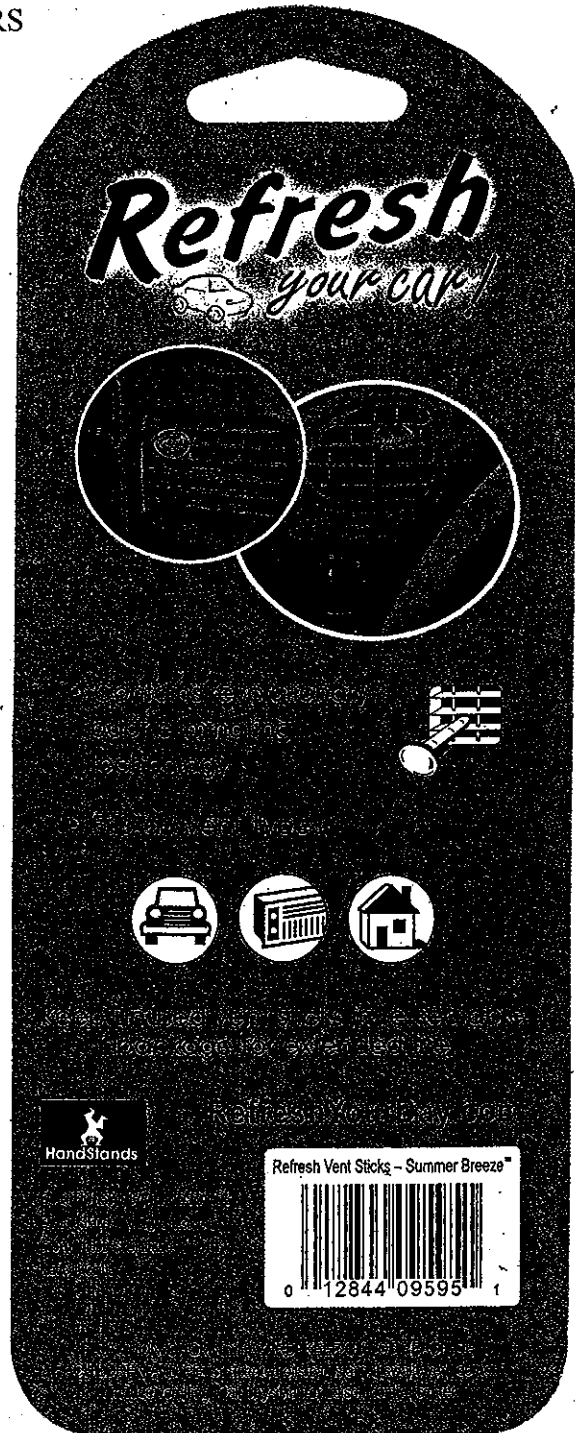
# EXHIBIT C

AMERICAN

COVERS



FRONT



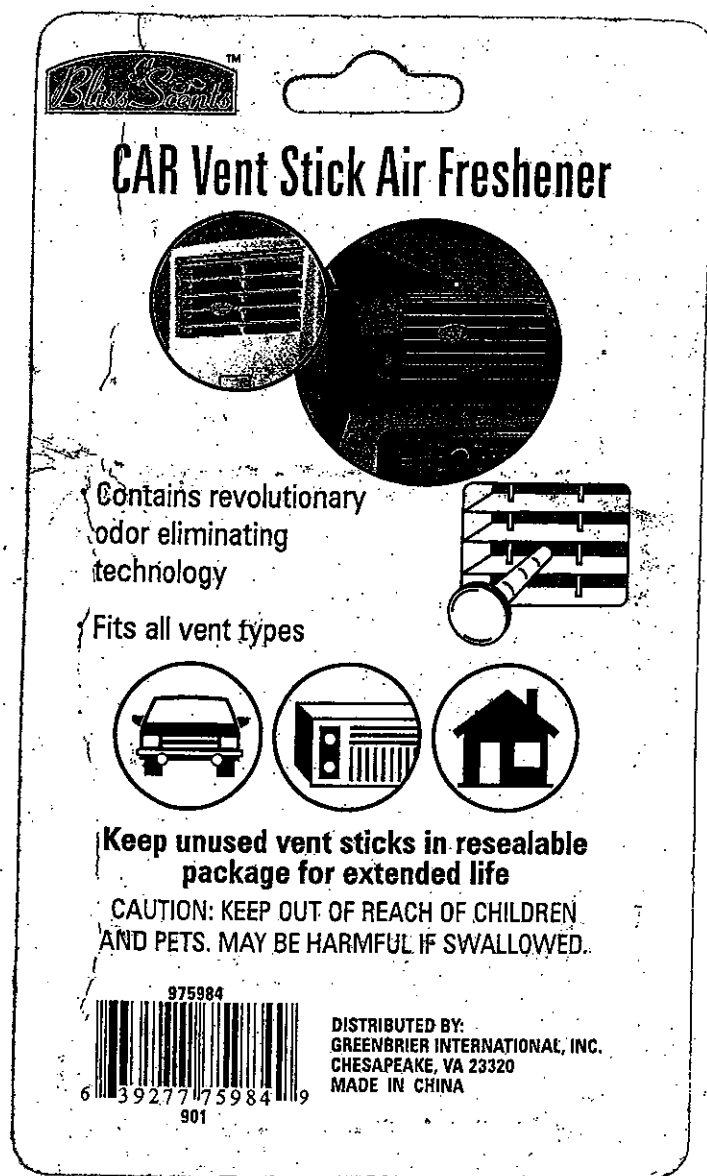
BACK

# EXHIBIT D

GREENBRIER



FRONT



BACK

# EXHIBIT E

AMERICAN

COVERS



GREENBRIER

